

AMENDMENT AND RESPONSE TO OFFICE ACTION
AND PETITION FOR EXTENSION OF TIME
U.S. Serial No. 09/863,933

REMARKS

This Amendment and Response amends the Abstract, the Specification, and claims 1, 39, 44, 49, and 53, cancels claims 2 & 6-37 without prejudice, and adds new claims 54-61. With this Amendment and Response, claims 1, 3-5, and 38-61 are pending in this application. A petition for a time extension and check for the extension period in the amount of \$420.00 is enclosed. No further fees are due; however, the Patent Office is authorized to debit deposit account 11-0855 if it determines otherwise.

I. Allowable Subject Matter

The Action objects to claims 49 and 53 as being dependent upon a rejected base claim, but indicates that these claims would be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims. Claims 49 and 53 have been rewritten in independent form as the Examiner suggests and are therefore allowable.

II. Amendments in the Specification

The Action objected to the abstract of disclosure because it is not limited to a single paragraph. The Abstract has been amended to be limited to a single paragraph, and therefore Applicants' Assignee respectfully request withdrawal of this objection.

Moreover, the specification was objected to because the phrase "one or mould cavities" is incomplete. The specification has been amended to read "one or *more* mould cavities," thereby completing the sentence. Applicants' Assignee therefore respectfully requests

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withdrawal of this objection as well.

III. 35 U.S.C. § 112 Rejections

Claims 39, 41, 42, and 52 were rejected under 35 U.S.C. § 112, second paragraph. The Action maintains that there is no antecedent basis for “the drum” recited in claim 39. Claim 39 has been amended to depend from claim 38, which recites the step of “providing a drum,” and therefore supplies antecedent basis for the recitation of “the drum” in claim 39. Applicants’ Assignee thus traverses the rejection and asks that it be withdrawn.

IV. 35 U.S.C. § 102 and 103 Rejections

A. Israel

Claims 1, 5, 38, 39, and 43-48 have been rejected under 35 U.S.C. § 102 as being anticipated by Israel. Claims 2-4, 40-42, and 50-52 have been rejected under 35 U.S.C. § 103 as being unpatentable over Israel. Applicants’ Assignee traverses these rejections and asks that they be withdrawn.

Claim 2 has been cancelled without prejudice, rendering moot the Aciton’s rejection of this claim. Moreover, claim 1 has been amended to include the features of claim 2 (i.e., claim 1 is now essentially claim 2 rewritten in independent form). Claim 1 now recites exerting on the mass in the closed mold cavity a fixing pressure capable of being varied during the fixing period. This feature is neither anticipated by nor obvious in light of Israel.

Israel teaches cookie molding by releasing dough from a dough hopper into cavities of a rotary die. A conveyor belt is positioned against the outer circumference of the rotary die “so that the conveyor belt adheres to the base surface of the molded dough within the die cavities”

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to aid in removal of the dough from the rotary die. Col. 3, lines 46-52. Even assuming, *arugendo*, that conveyor belts 32 and 54 in the disclosed embodiments of Israel (Figures 1 and 2) exert a fixing pressure on the dough in the die cavities, the pressure exerted by the belts is not capable of being varied, but rather remains constant, during the fixing period. For at least this reason, amended claim 1 and claims 5, 38, 39, and 43-48, which ultimately depend from claim 1, are not anticipated by Israel.

Nor does Israel teach or suggest that any pressure applied by the belt can be varied during the fixing period. To support his argument that the subject matter of claim 2 (which has essentially been incorporated into claim 1) and claims 3, 4, 40-42, and 50-52 is obvious in light of Israel, the Examiner merely maintains that “[t]he features recited in these dependent claims are considered to be obvious matters of routine optimization or structural design well within the skill of an ordinary artisan in the field of food technology.” Action, page 4. However, the Examiner provides no foundation for such a broad allegation. In fact, the Examiner has completely failed to set forth the basic obviousness analysis required by MPEP 706.02(j). He has not: (1) identified the relevant teachings of Israel that he is relying upon; (2) the differences between the claimed subject matter and the teachings of Israel; (3) the proposed modification to Israel necessary to arrive at the claimed subject matter; and (4) an explanation of why one of ordinary skill in the art would have been motivated to make such a modification. Rather, the Action essentially concludes that the features are obvious and supplies no basis for such a conclusion. “To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the

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examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references.” *Ex parte Clapp*, 227 U.S.P.Q. 972, 973 (Bd. Pat. App. & Inter. 1985). Israel is completely devoid of any teaching or suggesting of a fixing pressure capable of being varied during the fixing period, among other features recited in rejected claims 3, 4, 40-42, and 50-52, such as the pressurized medium recited in claim 50 and using multiple mass-feed components to feed multiple masses into a single mold cavity, as recited in claim 52. Therefore, the Examiner has the burden of properly setting forth “a convincing line of reasoning” as to why, among other features, a fixing pressure capable of being varied during the fixing period would be obvious to one of ordinary skill in the art in light of the teachings of Israel. His failure to do so has deprived Applicants’ Assignee a fair opportunity to reply, and Applicants’ Assignee therefore respectfully requests that the § 103 rejections be withdrawn for at least this reason.

Moreover, “a convincing line of reasoning” cannot be formulated because one of ordinary skill in the art would not be motivated to vary the alleged pressure applied by the conveyor belt in Israel. To begin, such a feature is simply not taught or even suggested by Israel. Moreover, the entire purpose of Israel is to mold dough in a die and use a film and a conveyor belt to then remove the dough from the die. Thus, one of skill in the art would not be motivated to reduce the pressure of the belt on the dough during a fixing period as doing so would jeopardize the adhesion between the dough and the belt necessary to remove the dough from the rotary die. Similarly, no motivation exists to increase the pressure of the belt on the dough as doing so would increase the adhesion of the dough to the film, thereby making it more

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difficult ultimately to separate the dough from the film. Thus, because Israel neither teaches nor suggests the subject matter of amended claim 1, it does not render obvious claim 1 or claims 3, 4, 40-42, and 50-52 which depend from claim 1.

B. Benham et al.

Claims 1, 5, 38, 39, and 45-48 have been rejected under 35 U.S.C. § 102 as being anticipated by Benham et al. Claims 2-4, 40-44, and 50-52 have been rejected under 35 U.S.C. § 103 as being unpatentable over Benham et al. Applicants' Assignee traverses these rejections and asks that they be withdrawn. As explained above, amended claim 1 now recites exerting on the mass in the closed mold cavity a fixing pressure capable of being varied during the fixing period. This feature is neither anticipated by nor obvious in light of Benham et al.

Benham et al. teaches an apparatus for molding food. Food 14 is fed by a saddle 36 between two rollers 18 and 20. Roller 18 is grooved and therefore the food fills the grooves 24 in roller 18 (see Figure 2). The food is subsequently transferred to fill the grooves 24 of roller 21 (see Figure 3). The only arguable mold cavities are the grooves formed in rollers 18 and 21. However, the grooves on rollers 18 and 21 are never closed, as recited in claim 1. Rather, even when rollers 18 and 21 are abutting roller 20, the ends of the grooves provided on rollers 18 and 21 are always open.

Furthermore, the only arguable fixing pressure exerted on food 14 is supplied by abutment of rollers 18 and 20 and by abutment of rollers 20 and 21, as shown in Figures 2 and 3, respectively. However, Benham et al. does not teach that any pressure arguably exerted by roller 20 on food 14 in rollers 18 and 21 is capable of being varied during the time that the food

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is in the grooves (i.e., the only arguable “fixing period”). Rather, only constant pressure is arguably applied to food 14 by roller 20. Thus, Benham et al. fails to anticipate amended claim 1 and claims 5, 38, 39, and 45-48 which ultimately depend from amended claim 1 for at least these reasons.

Moreover, the Action provides the same reasoning as it does with Israel for summarily concluding that the subject matter of claims 3, 4, 40-44, and 50-52 is obvious in light of Benham et al. The Action maintains: “The features recited in these dependent claims are considered to be obvious matters of routine optimization or structural design well within the skill of an ordinary artisan in the field of food technology.” Action, page 4. As explained above, such an analysis is entirely insufficient to support a proper obviousness rejection. The Examiner has failed to set forth even the most basic rationale and support for sustaining this rejection. For example, the Examiner has failed to explain how one of ordinary skill in the art, reading Benham et al. which arguably discloses only exerting a constant fixing pressure on food during the fixing period, would then be motivated to exert a fixing pressure that is capable of being varied during the fixing period. There is no disclosure or suggestion in Benham et al. of making such a modification and certainly no disclosure on how to effectuate such a modification or even that such a modification would be beneficial. While the Action cites “routine optimization” and “structural design,” it fails to explain how, for example, providing a fixing pressure capable of being varied during the fixing period would optimize the Benham et al. apparatus or is a better design for accomplishing the desired purpose of the Benham et al. apparatus. There simply is no teaching or suggestion in Benham et al. to do so, and therefore

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Benham et al. fails to render amended claim 1 obvious. Nor does it render obvious claims 3, 4, 40-44, and 50-52 which ultimately depend from amended claim 1. These obviousness rejections should be withdrawn for at least this reason.

Moreover, Benham et al. does not teach or suggest the pressurized medium recited in claim 50 or using multiple mass-feed components to feed multiple masses into a single mold cavity, as recited in claim 52. These claims are therefore not obvious in light of Benham et al. for this additional reason.

C. Leadbeater

Claims 1, 5, 43, and 44 have been rejected under 35 U.S.C. § 102 as being anticipated by Leadbeater. Claim 1 has been amended to include the subject matter of cancelled claim 2, which the Action does not maintain is anticipated by Leadbeater. Claim 1 is therefore not anticipated by Leadbeater, nor are claims 5, 43, and 44 which depend from claim 1.

Because none of the cited references teach or suggest the subject matter of amended claim 1, claim 1 is allowable, as are claims 3-53, which depend from allowable claim 1.

V. New Claims 54-61

New claims 54-61 have been added. The subject matter of these new claims is fully supported by the specification. Reducing pressure in the mold cavity so that the film conforms to the shape of the mold cavity, as recited in new claims 54 and 57, is illustrated and discussed, for example, in Figure 5 and in paragraph 0089, respectively. Positioning a portion of a belt in the mold cavity, as recited in new claim 55, is illustrated and discussed, for example, in Figure 8 and in paragraphs 0110-0111. Providing a mold cavity base of a substantially flexible

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membrane, as recited in new claims 56 and 58, is illustrated and discussed, for example, in Figure 10 and in paragraph 0143. Varying the fixing pressure during the fixing period, as recited in new claim 59, is described in the text accompanying and describing at least the embodiments disclosed in Figures 2 and 8-10. Reducing the fixing pressure in a stepwise fashion, as recited in new claim 60, is described in the text at paragraph 0134 relating to Figure 8g. Finally, using a pressurized medium to apply pressure to at least a portion of the belt, as recited in new claim 61, is illustrated and discussed, for example, in Figure 9 and in paragraphs 0136-0137, respectively.

New claims 54-56 and 59-61 ultimately depend from allowable claim 1 and are therefore allowable for at least this reason. Moreover, claims 54, 55, and 57 all recite reducing the pressure in the at least one mold cavity so that a portion of a film or belt conforms to the shape of the at least one mold cavity. This feature is not taught or suggested by the art of record, and these claims are therefore allowable over the art of record. Claims 56 and 58 recite a mold cavity having a base that includes a substantially flexible membrane and applying pressure to the cavity base during filling. These features are not taught or suggested by the art of record, and these claims are therefore allowable over the art of record.

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PETITION FOR TWO-MONTH TIME EXTENSION

To the extent necessary, under 37 C.F.R. § 1.136(a) (1998) assignee hereby petitions that the period for responding to the Action mailed on June 5, 2003 be extended for two months, up to and including November 5, 2003. Enclosed is a check which includes the amount of \$420 to cover the appropriate fee for this extension under 37 C.F.R. § 1.17.

CONCLUSION

Applicants' Assignee respectfully submits that claims 1, 3-5, and 38-61 are in condition for immediate allowance, and request early notification to that effect. If any issues remain to be resolved, the Examiner is respectfully requested to contact the undersigned at 404.815.6389 to arrange for a telephone interview prior to issuance of a final Office action.

Respectfully submitted,



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